

Contract Summary by Section

Note: The list of Contract clauses below does not include all contract terms and conditions. These are considered key clauses that are highlighted for the purposes of this CAP. The contract structure follows the FAR Uniform Contract Format:

<u>Section</u>	<u>Description</u>
A	Award Form
B	Supplies or Services and Prices/Costs
C	Statement of Work
D	Packaging and Marking
E	Inspection and Acceptance
F	Deliveries or Performance
G	Contract Administration Data
H	Special Provisions
I	Contract clauses
J	List of Documents, Exhibits, and Other Attachments

Contract Section B

Clause B-4, Estimated Fee and Cost:

- Annual fee amounts (less fee paid or missed under comprehensive, annual, or multiyear incentives) will be accrued each year. More or less fee may be paid out in a given year depending upon work completed.
- If the actual funding differs from the estimated funding by more than 10% in a given FY, the Contracting Officer (CO) may adjust the total available fee for that year.

Clause B-7, Option Exercise; Reduction of Term:

- If, by the end of FY 2003, FHI fails to earn 60% of the incentive fee available for annual performance based incentives, the comprehensive incentive, and progress payments based on completion dates in the multi-year incentives, then FHI agrees the term of the contract may be reduced from its current expiration date of September 30, 2006.

Contract Section H

Clause H.33, Performance Objectives, Measures, Expectations, and Fee Distribution:

- The final determination of the incentives and related fee distribution is at DOE's unilateral discretion. The performance incentives are contained in Section J, Appendix D of the contract.
- A change of conditions, circumstances, funding, or assumptions which impact the contractor's ability to earn fee constitutes a change, when such changes are beyond the contractor's reasonable control.
- Superstretch (SS) incentives:
 - Cost/fee are from cost savings realized through efficiencies and/or work scope deletions, not deferrals.

- SS work scope must be identified in a BCR and be approved by the RL Manager.
- SS costs will include fee at up to 20% of the BCWS of the accelerated work.

Clause H.35, Provisional Payment of Fee for Comprehensive and Annual PBI's

- Provisional payments are made at the discretion of the Contracting Officer on a monthly basis up to a maximum of 70% of the fee pool for a fiscal year.
- Fee associated with multi-year incentives is not subject to this clause.

Clause H.37, Provisional and Progress Payments of Multi-Year Incentives

- Provisional Payment: A conditional payment of fee for partial completion of a multi-year PBI. Payments are conditioned upon the successful completion of a subsequent event defined in the PBI. Upon completion of the subsequent event, the payment becomes final.
- Progress Payment: **Final payment** of fee based upon partial completion of a multi-year PBI and total completion of the PBI.
- The contractor can request payment for provisional and progress payments on a monthly basis.

Clause H.38, Multi-Year Fee Pool

- The CO will use best efforts to allocate any unassigned fee to meaningful work efforts during the term of the contract
- Fee from the comprehensive, annual, and multi-year PBIs which is unearned for failure to meet PBI requirements, is forfeited and not returned to the unallocated fee pool.

Clause H.49, Alternative Dispute Resolution (ADR):

FHI and RL agree to:

- Participate in a partnering workshop
- Select a “standing neutral” and ADR processes and procedures in the partnering workshop
- Agree to invoke ADR for significant disputes upon mutual agreement of the RL Manager and FHI President.

Contract Section I

Clause I.16 Laws, Regulations, and DOE Directives:

- Specifies process by which new requirements are added to the contract.
- Allows contractor 30 days to evaluate new requirements for potential impacts.
- If appropriate, requires changes to contract cost or schedule due to new requirements.

Clause I.20 Conditional Payment of Fee:

- Allows RL Manager to unilaterally reduce otherwise earned fee due to performance failure relating to:
 - Implementation of an approved Integrated Safety Management Plan and an approved Safeguards and Security Plan
 - Compliance with Applicable Laws, Regulations, and DOE Directives
 - Accomplishment of annual performance commitments relating to ES&H and Safeguards and Security (S&S)
 - Prevention of catastrophic events or breaches of security

- Fee reduction for ES&H and S&S shall be in specified ranges, for first, second, and third degree failures
- The RL Manager may also unilaterally reduce otherwise earned fee for failure to:
 - Achieve specified minimum performance levels
 - Achieve stipulated cost performance levels
- Reductions for either of these failures shall not result in the total earned fee being less than 25% of the total available fee amount

Fee Administration

The fee on the PHMC is administered primarily through annual Performance Based Incentives (PBIs), and multi-year PBIs (where requirements are established in one fiscal year but the final completion date extends into a future fiscal year.) A PBI is an individual agreement that sets forth performance objectives, measures, expectations and related fee distributions, and which is incorporated into the contract at Section J, Appendix D. All of the Contractor's available fee pool is allocated to PBIs, except for a small pool of "unallocated" fee, which is intended to be allocated during the contract term. In addition, the contractor has the opportunity to earn Super Stretch fee for completing Super Stretch Performance Based Incentives (SSPBIs). Fee for super stretch performance is outside of the available fee pool.

Performance Incentives will Multi-year PBI can include Provisional Payments and/or Progress Payments, as explained in detail in Clause H.37.

A Provisional Payment is a conditional payment of fee for partial completion of a multi-year PBI, conditioned upon the successful completion of a subsequent event as set forth in the PBI. Upon successful completion of the subsequent event, the provisional payment of fee will become a final payment of fee. If the contractor fails to successfully complete the subsequent event upon which the provisional payment of fee is conditioned, the contractor shall refund to the Government the provisional payment(s) received associated with the missed performance based event.

A Progress Payment will be a final payment of fee based upon partial completion of a multi-year PBI, as defined in the individual PBI. In general, progress incentives will have greater intrinsic value to the Government than provisional goals.

For any expectation to be considered performed, work must meet the criteria in the PBI and must be accomplished with the approved cost and schedule thresholds specified in the PBI, as modified through the Change Control Process. The process for administering PBIs and SSPBIs is outlined in Clause H.33, Performance Objectives, Measures, Expectations, and Fee Distribution.

At the conclusion of the appropriate performance period, the Government will evaluate the contractor's overall performance to determine the fee earned during the year. This evaluation will be a consideration in (1) incentive fee determinations by the RL Manager, (2) invoking